REA LAW JOURNAL

Vol. I, No. 3 February, 1939 Page 21

RECENT CASES

Actions - Standing of Public Utilities Without Exclusive Franchises to Enjoin Competition by TVA

The Tennessee Electric Power Company and other public utilities operating in TVA area sought to enjoin the TVA from selling electric energy to municipalities, non-profit electric membership corporations and industrial plants. The petitioning utilities contended that the TVA "is a plain attempt, in the guise of exerting granted powers, to exercise a power not granted to the United States, namely, the generation and sale of electric energy; that the execution of the plan contravenes the Fifth, Ninth and Tenth Amendments of the Constitution, since the sale of electricity on the scale proposed will deprive the appellants of their property without due process of law, will result in Federal regulation of internal affairs of the States and will deprive the people of the States of their guaranteed liberty to earn a livelihood and to acquire and use property subject only to State regulation." Held, injunction denied. Tennessee Electric Co. v. Tennessee Valley Authority, 6 U. S. L. Week 713 (U. S. Sup. Ct., Jan. 30, 1939).

Mr. Justice Roberts, writing the opinion for the Court, states that the premise upon which the utilities' action is based is that one threatened with a special injury by an act of a governmental agent based upon statutory authority may challenge the validity of the statute. But the principle is inapplicable because the right invaded by the injury is not a "legal right". The injury here involved is competition. Competition can only invade a "legal right" if it is based upon an exclusive franchise to operate in a given area free from competition. The utilities did not have exclusive franchises and are merely corporations chartered to function as public utilities, and in the absence of anything more, have no right to be free of competition. The utilities contended that since most of the states require certificates of convenience and necessity as a condition precedent to the doing of business by public utilities, the utilities already doing business had, in effect, the right to be free from competition. However, the Court points out that this position can not be sustained, especially in view of the fact that the states within the TVA area have generally provided that Federal corporations and non-profit electric membership corporations shall not be subject to the jurisdiction of state public service commissions.

The petitioners also argued that though they might be subject to competition, the competition must be lawful in all its aspects, and that competition based upon an unconstitutional grant of power is unlawful and subject to injunction. The Court, holding it unnecessary to decide whether there was any unconstitutional grant of power to TVA or any unlawful competition resulting therefrom, holds that any damage resulting from competition, lawful or unlawful, is damnum absque injuria.

Finally, it was urged "that the act of the Authority cannot be upheld without permitting Federal regulation of purely local matters." In denying this proposition, the court points out that this means that the lowered rates of the Authority constitutes, as a practical

business matter, an indirect regulation of the rates charged by utilities. But such would be true of any private company selling energy at lower rates than the petitioners. To uphold the utilities' contention would amount "to saying that competition by an individual or a state corporation is not regulation but competition by a Federal agency is." Moreover, the Court found that "the sale of government property in competition with others is not a violation of the Tenth Amendment..." and as "there is no objection to the Authority's operations by the states...the appellants, absent the states or their officers, have no standing in this suit to raise any question under the /Tenth Amendment/."

The bill also alleged that the TVA conspired with the Administrator of the PWA to force the utilities to sell their property to the TVA by announcing grants and loans to municipalities and further coerced the municipalities into buying power from TVA by making that a condition to the grants and loans. However, the district court made no findings of duress, coercion, etc., and the evidence excluded by the district court on these points was found to be either properly rejected or, at most, harmless error. Cooperation between two agencies of the government does not of itself involve any unlawful conspiracy.

Mr. Justice Reed took no part in the decision; Justices Butler and McReynolds dissented on the ground that the petitioners have standing in equity to maintain a suit since they are being injured by the exercise of illegal powers on the part of TVA.

Actions - Standing of Public Utility Without Exclusive Franchise to Enjoin Competition by Municipality Which Had Granted Franchise to Public Utility

City leased its electric distribution system to public utility corporation. The franchise was silent as to whether any other competing systems would be authorized by the city. The city thereafter proposed to construct its own municipal electric light and power system. Public utility corporation now seeks injunction alleging that such construction by municipality would deprive the utility's system of all value. Held, injunction will not lie. The city did not grant an exclusive franchise to the public utility and therefore competition was one of the risks undertaken by the utility. Damage suffered by the utility even to the extent of total loss of value of system would be damnum absque injuria provided that the city proceeded with construction and competition in a lawful manner. Western Public Service Co. v. City of Minatare, 99 F. (2d) 844 (C.C.A. 8th, 1938).

Attorneys - Constitutionality of Statute Levying Tax Upon Value of Attorney's Services

Held, in an action for declaratory judgment brought by an attorney, that a state service tax of "two percent upon the value of services rendered or performed by any person engaged in business of a professional...nature,...including but not limited to...attorneys-at-law" does not violate any provisions of the state or national constitutions. Rinn v. Bedford, 84 P. (2d) 827 (Colo. 1938).

Chattel Mortgages - Affidavit of Consideration

Controversy involved the validity of a chattel mortgage recorded under the New Jersey Act. The Act requires that every mortgage shall have an affidavit including a statement of "the consideration of such mortgage...." A creditor attacks the validity of a mortgage on the ground that the affidavit stated that it had been granted because certain certificates of stock had been given by the mortgagee to the mortgagor's creditor as collateral for money due. The creditor demonstrated that the stock in question had not been

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A review of that portion of the law important and interesting to attorneys working in the field of rural electrification.

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Address suggestions and contributions to the Editorial Office---REA, Room 204, 1518 "K" Street, Washington, D. C.

With this issue the REA Law Journal reaches out to all attorneys engaged in the development of rural electrification projects. It hopes to make available to these attorneys, located in nearly all the forty-eight states and in the Capitol, the day-to-day growth of cooperative law. It would be wishful thinking to expect that each attorney would have the time to read the vast amount of case law and literature so necessary to a thorough knowledge and understanding of modern legal developments. To the extent that each attorney is relieved from this burdensome, though interesting, task the REA Law Journal will have fulfilled its purpose.

delivered until eleven months after the execution of the mortgage and shortly before the present controversy. Held, that the chattel mortgage was void as to the creditor. Atzingen v. Ottolino, 2 A. (2d) 652 (N.J. Ch.1938).

The rule of the court is that the affidavit required by statute to be annexed to the chattel mortgage must truthfully state the facts required and any substantial deviation from the truth, regardless of honest intentions, will invalidate the mortgage as against creditors.

Claims - Priorities - Priority of United States' Claim Over State Claim for Taxes

X borrowed money from bank under provisions of the Federal Housing Administration Act, and executed a note in favor of the bank. X defaulted and in accordance with the provisions of the Federal Housing Act, the Administrator paid X's obligation to the bank. The bank thereupon, and prior to the adjudication of insolvency of X, assigned the note to Federal Housing Administrator. X was later adjudged insolvent, and in a subsequent court proceeding the claim of the United States was denied priority to a claim by the State of Washington for sales taxes due and unpaid. Held, that the lower court erred in subordinating the claim of the United States to that of the State of Washington. In re Dickson's Estate, 84 P. (2d) 661 (Wash. 1938).

Under the Washington statute unpaid taxes were given the status of "a lien prior to all other liens, except prior tax liens,..." The court found that by virtue of Rev. Stat. 3466, debts due the United States by an insolvent have priority over debts due by such insolvent to a state. The fact that the obligation when in the hands of the bank was not entitled to priority, was considered immaterial by the court, which stated that the problem was solely whether there was any obligation due the United States at the time of the adjudication of insolvency. An earlier case, Federal Housing Administrator v. Moore, 90 F. (2d) 32 (C.C.A. 9th, 1937), was distinguished on the ground that there the debt was not assigned to the Administrator until after adjudication of insolvency.

Contracts - Sunday laws - Validity of Contract where Offer Made on Sunday is Accepted on Weekday

Real estate broker informed defendant on Sunday that he had a customer for defendant's home. Defendant promised broker to pay him a commission "if the house were sold". On same day broker brought prospective purchaser and introduced him to defendant. Some negotiations between defendant and prospective purchaser then took place. The negotiations were continued and sometime during the following week defendant sold the house to prospective purchaser. Broker sues for commission, and defendant cites the Massachusetts statute forbidding work or business to be done on Sunday. Held, judgment for broker. Maher v. Haycock, 18 N. E. (2d) 348 (Mass. 1938).

Though the preliminary negotiations took place on Sunday, defendant's offer to pay a commission only ripened into a contract upon broker's production of a purchaser ready, willing and able to buy on the defendant's terms. Despite the fact that the broker did nothing after Sunday, it was not until some day during the week that the prospective purchaser became willing to buy on the defendant's terms, and not until that time did a contract come into existence between the broker and the defendant. The contract was therefore not a Sunday contract.

Corporations - Directors - Liability of Directors for Failure to Pay Taxes When Due

Directors of corporation were notified by Internal Revenue Collector that certain documentary taxes were due to the government. Shareholders were assessed by directors to pay for the taxes, which were not paid despite the fact that the assessments were collected. A penalty was therefore levied against the corporation. The corporation now brings suit against the directors to recover the amount of penalty paid by the corporation. Held, the directors are liable "on the ground that contrary to their obligation to the corporation and its stockholders they did not pay when they had the money, which had been collected by assessment for that specific purpose". Coeur D'Alenes Lead Co. v. Kingsbury, 85 P. (2d) 691 (Idaho, 1938).

Corporations - Quo Warranto - Right of Stockholders to Bring Quo Warranto Against Corporate Directors

Stockholder applied for a writ of quo warranto against three corporate directors. Lower court dismissed action on ground that quo warranto would apply only as against officers of a public corporation. Held, lower court should be reversed. Quo warranto lies against directors of private corporations as well as public corporations. State ex rel. Moss v. Willis, 185 So. 46 (La. 1938).

Damages - Right of Municipality to Recover Damages for Delay in Construction of Municipal Electric Plant Arising from Injunction Suits Brought by Private Power Company

Private power company obtained a temporary injunction, upon posting an injunction bond, to prevent municipality from constructing an electric power plant. Upon final determination of suit in trial court, injunction was dismissed and upon appeal to the Supreme Court this action was upheld. Held, the municipality may recover the amount of profit it would have made during the eleven months that operation of electric plant was delayed. City of Corning v. Iowa-Nebraska Light & Power Co., 282 N. W. 791 (Iowa, 1938).

The court states that the amount of profit which the municipality lost through the delay was, if it could be shown, the proper amount of damages. It was particularly easy to demonstrate the amount of profit that would have been earned since the effect of the municipal plant was to curtail practically all sale by the private company, thus providing a ready yard-

stick. In addition, the evidence of the amount of profit made during the first year of operation of the municipal plant was found to support the contention of the municipality as to the amount of business that it would have done during the period of delay. Since the homes of the customers were already wired and ready for service, the element of uncertainty present in new enterprises as to the number of customers who would actually accept service was removed. The court intimated that if the question concerned the operation of a new untried enterprise the extent of profits might be too remote and too speculative to be recoverable in an action at law for damages.

Deed of Trust - Sale by Trustee - Need for Advertisement in All Counties Where Property is Located Even Though Sale is Made in One County.

X executed a trust deed with a power of sale by trustee. Trust deed covered property in two counties. Mississippi statute provided that where land is situated in two counties, the parties may contract for the sale of the whole to take place in either of the counties in which any part of the land lies. The statute also required that notice of the sale must be advertised in both counties. Trustee advertised in only one county, the county in which the sale was held. X now seeks in equity to have the sale declared void. Held, the sale is void. Connecticut General Life Ins. Co. v. Lombard, 185 So. 260 (Miss. 1939).

The legislative intent to have the sale advertised in both counties, even though the whole property was sold in the one county, is so clear that the violation of that intent makes invalid the sale by the trustee.

Directors - Statutory Construction of Time During Which Directors Suffer Personal Liability for Failure to Comply with Statutes Requiring Filing of Papers

Montana statute provides that unless various papers are filed by directors by a stipulated time, directors shall be jointly and severally liable for all debts or judgments of the corporation incurred while such papers remain unfiled. Held, that the personal liability of the directors depends upon whether they were in default at the time debt was incurred rather than at time debt was reduced to judgment. Bergin v. Tweedy, 84 P. (2d) 1052 (Cal. App. 1938).

Estoppel - Estoppel Based Upon Negligence of Municipality in Stating Manner in Which Electric Rates were to be Computed

Municipality sold electric current to packing company, and a time meter was installed. City superintendent informed packing company that the readings of the meter should be multiplied by 30 to arrive at the monthly bill. For 2½ years bills were rendered to packing company on that basis, and at that time packing company discontinued service. Municipality now brings action against packing company charging that reading of meter should have been multiplied by 40 instead of 30 to indicate proper bill due, and that error had resulted from an unnoticed defect in meter. Held, packing company not liable.

The court first found that the municipality was not exercising a governmental function in the sale of electric energy and that therefore the doctrine of estoppel was applicable against it. The court found an estoppel here based upon the negligence of the city in failing to locate the defect and to inform packing company of the proper charges. Reliance on the part of the packing company was found in the fact that had the correct rate been quoted it, it in turn would have charged a higher rate for its service and also probably would have discontinued service at an earlier time. East Point v. Upchurch Packing Co., 200 S. E. 210 (Ga. App. 1938).

Mortgages - Moratorium Statutes - Applicability of Moratorium Statutes Where Mortgagee is Federal Instrumentality

Federal Land Bank sought to foreclose mortgage. Defendant asked that suit be continued for two years in accordance with Iowa Moratorium statute. Held, even assuming Federal Land Bank to be a federal instrumentality, state moratorium statute is applicable since federal statute creating land banks does not give them express immunity from effect of state laws. First-Trust Joint Stock Land Bank v. Lehman, 283 N. W. 93 (Iowa, 1938).

Municipalities - Statutory Construction-Necessity for Obtaining Certificate of Convenience and Necessity Prior to Construction of Municipal Electric Plant

A 1934 Act provided that "no utility, person, or corporation shall begin the construction, of any plant..." to be used for generation and transmission of electricity without first obtaining a certificate of convenience and necessity. The definition of utility was very broad and clearly included a municipality. In 1936 an amendment was passed providing that the term "utility" shall not include any municipality "owning, controlling, operating or managing any facility...." City of Vanceburg sought to construct an electric plant and to obtain the necessary money therefor by the issue of bonds without obtaining a certificate of convenience and necessity. In a taxpayer's suit to enjoin construction, the City defended on the ground that the legislation indicated that municipalities were to be entirely exempt from public service commission jurisdiction. Held, injunction granted. The amendment applies only to municipalities owning, controlling, operating or managing any facilities and therefore does not exempt from the jurisdiction of the public service commission a municipality seeking to construct a new plant. Vanceburg v. Plummer, 122 S.W. (2d) 772 (Ky. 1938).

Seal - Effect of "(seal)" on Printed Document as Determining Character of Instrument

Defendant signed printed note form which had "(seal)" printed on it in the place immediately following his signature. Held, that such fact, in the absence of any attestation clause did not of itself make the obligation a sealed instrument, but that the question was one for the jury to determine whether it was the intention of the signer to execute a sealed instrument. The court therefore reversed the decision of the trial court which had directed a verdict for the defendant on the ground that the instrument was not under seal, and the suit therefore barred by the statute of limitations. Judge Lehman, concurring in result, stated that the fact that the signer must have seen the seal on the instrument indicated, objectively, his intention to adopt the seal as his own and that extrinsic evidence of the signer's intention was not admissible. Transbel Inv. Co., Inc. v. Benetos, 18 N. E. (2d) 129 (N. Y., 1938).

Statutes - Necessity for Inclusion of Reference to Subject-Matter in Title of Statute

City of third class passed ordinance authorizing issue of electric plant bonds payable solely out of revenue to obtain money to rebuild electric light and power plant. A referendum of voters was held, and a majority voted in favor of sustaining the ordinance. A 1926 Kentucky statute authorized cities of the third class to take such action without a referendum; a 1936 amendment required a referendum of voters to be held in a substantially different manner than that followed by the city. The 1936 amendment stated in its title that it was an act to amend and reenact the 1926 act and to extend the benefits thereof to cities of different classes. Held, the portion of the amendment dealing with a referendum is void since the requirement of such a referendum is nowhere indicated in the title, and therefore the ordinance is

valid. Booth v. Owensboro, 122 S. W. (2d) 118 (Ky. 1938).

Taxation - Exemption of Cooperative from Gross Sales Tax

Municipality levied an ad valorem tax on accounts receivable of plaintiff cooperative marketing agency selling dairy products of its members. Statute provided "no municipal corporation shall levy or assess a tax...on any agricultural products raised in this state, or the sales thereof, etc." Constitution provided that taxation must be "ad valorem on all property subject to be taxed."

Held, constitutional provision inapplicable since tax on gross sales is not a property tax and the constitutional provision prohibits exemptions only with respect to property taxes. Another constitutional provision that "all taxation should be uniform upon the same class of subjects" was also held not to have been violated by the statute. The court stated that the legislature has authority to make classifications as to taxes not levied on property and that exemptions, if reasonable, would be upheld. Atlanta v. Georgia Milk Producers Confederation, (Ga. Sup. Ct. Nov. 19, 1938), Prentice-Hall, State and Local Tax Service, Jan. 24, 1939, para. 34007.

It should be noted that the Georgia Constitution was amended in 1937 by deleting the provision that taxation must be "ad valorem on all property subject to be taxed." This would indicate that the legislature now has power to make classifications in all taxes including property taxes.

Taxation - Mortgage Recordation Tax - Federal Instrumentalities

Receiver of bank borrowed money from RFC and executed a mortgage as security therefor, and further agreed to take all necessary action to preserve the lien and to pay any recording costs. The receiver paid under protest the state fee for recording and now brings action to recover same on the ground that the mortgage was to secure a loan from RFC which is a federal instrumentality and that, therefore, the tax as applied to this particular mortgage was a tax upon the federal instrumentality and thus void. Held, that the tax is a valid levy although the RFC could not itself be required to pay a mortgage tax as a condition precedent to the recording of the mortgage. Since by agreement between the parties the receiver had agreed to pay the tax, the interference with the federal instrumentality was too remote. Taylor v. Genessee County, 282 N. W. 863 (Mich. 1938).

Taxation - Mortgage Recordation Tax - Federal Instrumentalities

Maryland Statute imposes a tax on the recordation of mortgages in addition to recording fees, Held, not constitutionally applicable to the recordation of a mortgage executed to the HOLC as mortgagee. The immunity of the corporation results from its status as an instrumentality of the Federal Government. The court feels that the case is governed by Federal Land Bank v. Crosland, 261 U. S. 374 (1923). Pittman v. HOLC, 6 U.S. L. Week. 493 (Md. Ct. of App. 1938)

Torts - Negligence - Liability of Electric Company for Injuries Caused to Plaintiff from Contact with Electric Transmission Line Running Over Plaintiff's Farm

Electric company had maintained for a number of years a high power electric transmission line over plaintiff's farm, 18 feet away from a barn and 17 feet above the ground. Plaintiff, while carrying a cable to be attached to a post, was injured by shock resulting from contact of cable with electric line. Statute required certain pre-

cautions to be taken if the lines passed over public property, but was silent as to requirements if the lines were located over private property. Held, that the trial court erred in directing verdict for the defendant, since the questions of negligence of the defendant and contributory negligence of the plaintiff were for the jury to decide. The court intimated its view that the defendant was negligent, stating that the statutory duty placed upon electric companies with reference to construction of lines over public highways does not lessen the effect of the common law rules of negligence. Aller v. Iowa Electric Light and Power Co., 283 N.W. 81 (Iowa, 1938).

Workmen's Compensation - Definition of "Willful Misconduct" Necessary to Bar Recovery under Workmen's Compensation Act

Electric company lineman had been repeatedly warned by company to use safety appliances when working on electric poles. While working, and without using the appliances, he touched a pole charged with electricity and was thrown to the ground, subsequently dying from the injuries received from the fall. The lineman had been warned immediately before the accident and other employees were at the time securing safety appliances for him upon the instructions of the company's superintendent. Held, his wife could not recover workmen's compensation. Cordell v. Kentucky-Tennessee Light & Power Co., 121 S.W. (2d) 970(Tenn. 1938)

The court stated that "where the employee, with full knowledge of the danger and a familiarity with the safety rules, disregards same, takes a chance and is injured, his conduct within the meaning of the statute is willful and no recovery can be had."

LEGAL MEMORANDA RECEIVED IN JANUARY, 1939

853. Vote necessary for Pennsylvania Corporation to come within Electric Cooperative Corporation Act
Bullock to Wise

854. Power of a foreign corporation to act as a trustee of land situated in a state other than the state of incorporation
Hertz to Penstone

855. The effect of the Canadian Trade Agreement of 1938 upon the REA "Buy American" policy. Conclusion is reached that it will have no effect.
Lett to E. Johnson

856. Lumber imported from Canada need no longer be marked
Lett to Richter

857. Alabama Cooperative extending lines into Florida
Winokur to Lamberton

858. Necessity of Stockholders' or Members' Consent to Execution of Corporate Mortgage
Hertz to O'Callaghan
A thorough review of the relevant statutes and cases in all jurisdictions where there are REA borrowers. Includes also a list of states retaining the common law theory of mortgages.

859. Power of Texas Municipality to make Wiring and Plumbing loans.
Gerber to Frazer

860. Discussion of questions raised concerning the validity of our Deed of Indenture in Mississippi
Gerber to Blackburn
Discusses: 1. Differentiation between mortgages on stocks of goods and normal after-acquired property clause mortgages.
(continued on page 31)

ADMINISTRATIVE INTERPRETATIONS

Electrical Transformers as Manufacturing Machinery

Kentucky statute provided that "machinery in course of manufacture of persons, firms or corporations actually engaged in manufacturing...." is exempt from municipal taxation and subject only to state taxation.

Ruled, that transformers just outside the power house used for stepping the current up and down and for changing the phase of the current are part of the exempt manufacturing machinery rather than just transmitting appliance. Op. Atty. Gen. Ky. Jan. 24, 1939. Prentice-Hall St. & Local Tax Serv. para. 34,049.

Exemption of Rural Electrification Cooperatives from Automobile Use Tax

Rural electrification corporations organized under the Kentucky Rural Electric Cooperative Corporation Act are state corporations, and although receiving help from federal agencies, are not exempt from tax on that ground. However, the provisions of the Act exempting such corporations from various taxes /the Act reads: "Corporations formed hereunder shall be exempt from all franchise taxes, profit taxes, gross and net taxes, sales taxes, occupation taxes, privilege taxes, income taxes, any and all taxes on electric current consumed and from all excise taxes whatsoever, any statute or statutes now existing or hereafter passed to the contrary notwithstanding"/, are broad enough to include the automobile use tax which has been held to be for revenue rather than merely regulatory. Though the automobile use tax contained a number of exemptions, a rural electric cooperative would not fit within the terms of any of them. Op. Atty. Gen. Ky. Jan. 6, 1939. Prentice-Hall St. & Local Tax Serv. para. 44,118.

Subjection of Pay of Directors to Wage Tax

Directors, serving as such, are not employees within the meaning of the Nevada Law. Directors' fees paid for such service do not constitute wages subject to tax. On the other hand, where a director is employed by a corporation in a service other than that of a director, such director would then be deemed an employee and the remuneration for such other service would be taxable., Op. Atty. Gen. Nev. Jan. 27, 1939. Prentice-Hall Unemployment Ins. Serv. para. 29,538.

Transmission Lines and Poles Considered to be Personalty

Telephones, lines, poles, etc., generally used as and comprising a telephone exchange are personal property and should be sold for taxes under same rules and regulations prescribed by law for sale of any other individually owned personal property for taxes. Poles which are generally set up on streets or upon leased land do not form a part of real estate but retain their original identity as personalty. Op. Atty Gen. Ala. May 8, 1937. Prentice-Hall State & Local Tax Serv. para. 50,002.

A. L. R. NOTES

117 A.L.R. 649 (1939) Judicial questions regarding Federal Hours and Wages Act and state acts in conformity therewith.

117 A.L.R. 1054 (1939) Duty and liability of trustee under mortgage or deed of trust securing debt to mortgagor, subsequent purchaser or lienor.

117 A.L.R. 1425 (1939) Liability for injury or death from refrigeration machinery or apparatus.

BOOK REVIEWS

The Administrative Process. By James M. Landis. Yale University Press. 1938 $2.00

Dean James M. Landis of the Harvard Law School delivered in January, 1938, the Storrs Lectures on Jurisprudence at the Yale School of Law, which constitute the substance of the book. The introduction stresses the fact that the administrative process springs from the inadequacy of a simple tripartite form of government to deal with modern problems. In a most realistic way the author develops his points with clear illustrations taken from his rich and varied experiences so recently acquired by him during his service with the Securities and Exchange Commission and Federal Trade Commission. Theory and practice combine to give a remarkable treatment of the rapidly growing and significant field of administrative law.

The necessity for the administrative process is clear. It meets the demands for specialization in law; it provides for the initiation of action by an administrative tribunal, a long-felt need in our law, and a function which an administrative agency can fulfill, but which a court cannot.

In the second lecture on the framing of policy, the relationship of the administrative and legislative is treated with a demonstration that the administrative simply supplies certain deficiencies in the combined functioning of the legislative, the judicial and the executive processes.

In the third lecture the author treats of sanctions to enforce policies and considers the organization of the administrative. Implements or remedies to effectuate policies are called sanctions. In the past we have had the criminal penalty, the civil penalty, the resort to the injunctive side of equity, the tripling of damage claims, the informer's share, publicity and other devices as methods for the realization of policies. In the administrative we are finding new sanctions or methods such as the power both to initiate claims and to determine whether the alleged facts which give rise to the complaint exist to such a degree as to justify the imposition of a penalty. This device of the administrative process has been severely criticized as constituting the administrative agency both the judge and the jury. A thorough examination of the origin of this device and of its actual operation will do much to dispense with such criticisms. Properly safeguarded the arguments for the device outweigh the criticisms.

The fourth and concluding lecture treats of administrative policies and the courts. This is an excellent treatment of the problem of judicial review. So long as judicial review remains there can be no question of the "supremacy of law" or the "rule of law." The question of the finality of administrative findings of fact is thoroughly discussed. This involves a consideration of the Ohio Valley Water Case, 253 U.S. 287 (1919), the St. Joseph Stock Yards Case, 298 U.S. 38 (1936) Crowell v. Benson, 285 U.S. 22 (1932); and similar cases illustrating the existing confusion in the views of the Supreme Court with respect to administrative finality.

A reading of these four lectures is a pleasant and instructive excursion for any one interested in the advancement of administrative process.

Allen Moore
Special Assistant to
the General Counsel

Government Corporations and Federal Funds. By John McDiarmid. University of Chicago Press, Chicago, 1938, Pp.xx, 244. Price $2.50

This book is in response to the demand of the times for a thorough historical and factual study of government corporations. The historical aspect of the problem is thoroughly treated. Beginning with the early government corporations such as the Panama Railroad Company and the Emergency Fleet Corporation, Professor

McDiarmid takes us through to modern times with the RFC, HOLC and the other New Deal incorporated governmental agencies. Certain subjects that are often rather hazy are here clearly stated, such as the sources of the funds of government corporations, including Congressional Appropriations, sale of capital stock, borrowing and operating income. A concise statement is presented of the relationship between the corporation and the General Accounting Office. As is stated on the book jacket "there is much talk-- and little knowledge-- of how government corporations operate and what they accomplish." Widespread reading of this little volume will probably result in less talk and more knowledge of the subject.

Revenue Bonds. By John F. Fowler, Jr. Harper & Bros., N.Y. 1938. Pp. xii, 244

This is the first book to deal with the subject of revenue bonds and therefore contains a thorough discussion of all background material. The history, origin and background of this method of public finance is treated in a thorough and interesting fashion. The book is of importance to lawyers in that it contains the factual and economic background so necessary for the understanding of the complex legal problems arising out of revenue bond issues. The legal discussion is confined to the elementary problems such as debt limitations and tax exemptions. The discussion is general and no attempt is made to supply citations to cases or statutes. However, an appendix includes a list of law review articles as well as non-legal articles on revenue bond financing. The book touches the field of rural electrification specifically at one point when it is demonstrated that electricity as a subject-matter has produced the largest amount of revenue bond financing to date.

(Legal Memoranda continued from page 28)

2. Validity of provision creating a lien on rents, income, etc. in Mississippi.

861. Whether Iowa Code Authorizes formation of a Cooperative for several purposes set out.

Broderick to Gamer

Refutation of a quo warranto attack on an electrical cooperative formed under a statute authorizing "manufacturing" and other purposes. Effect of articles setting forth several purposes--some authorized, others unauthorized, and considering question whether courts should look behind the articles for the true purposes. Effect of laches in quo warranto.

862. Effect of failure of a condition precedent imposed by commission prior to authorization of issuance of note by cooperative (Alabama)

Lett to Lamberton

Also a discussion of the effect of non-compliance with blue-sky laws.

863. Effect of reference to the Loan Contract in Porto Rican Bond Resolution

Hertz to O'Callaghan

Study of relationship between bond resolutions, statutes authorizing the same, and the bond. Discusses incorporation by reference of the resolution in the bond.

864. Suggested matters to be included in Bond Resolution (Porto Rico)

Hertz to Blackburn

866. Liability of an insurance company to the insured on a public liability and property damage policy issued to the insured for damages which the insured has paid to a railroad pursuant to an indemnity clause contained in a railroad crossing agreement made by the insured with such railroad

Broderick to Nicholson

867. Easements granted by parol
L. Jones to Lamberton

868. Use of deed of trust in Oklahoma
Gerber to Fischer

869. Right of materialmen to demand removal, copies or inspection of Borrower's Contract with contractor in REA files
Hertz to Hartung

870. Electric transmission lines crossing railroad tracks at highway crossings, where the electric transmission lines are within the confines of the public highway
Broderick to Summers

871. Sufficiency of notary's acknowledgment in N.C. to mortgage executed by North Carolina 31 Halifax
Winokur to Yarley

872. Vermont Installation Loans - Necessity of obtaining authorization from the shareholders of the corporation or from any regulatory body
Bullock to Frazer

873. Desirability of use of deed of trust over mortgage in North Carolina
Winokur to O'Callaghan

874. Qualification of foreign non-profit corporation to do business in Ohio
Bullock to Berg

875. Power of Virginia cooperative to supply a West Virginia cooperative with electric energy
Hoyt to Lamberton

876. Ratification as a waiver by shareholders and directors of the failure to receive notice of meetings
Gerber & Cohen to O'Callaghan

877. North Carolina cooperative extending lines into South Carolina
Winokur to Gillikin

878. Power of North Carolina cooperative to construct, own and operate a generating plant
by V. D. Nicholson
This is a memorandum in the form of a brief and includes a thorough discussion of problems of general interest, e.g., scope of the terms "system" and "construct".

879. Power of a foreign cooperative with "Cooperative" as a part of its name to build lines in Texas where there is a statutory prohibition against the word "cooperative" as part of the name of a corporation not incorporated under the Electric Membership Act
Gerber to O'Callaghan
Includes discussion of power of corporation to transact business in an "assumed" or "trade" name.

Tax Memoranda

Ohio Taxes
Altkrug to Moore

North Dakota Taxes
L. Jones to Moore

Taxes payable by North Carolina corporation engaged in business in S. C.
Altkrug to Winokur

Wisconsin Taxes
Altkrug to Moore

Pennsylvania Taxes
L. Jones to Gillikin

Texas Taxes
Altkrug to Moore

Kansas Tax Laws
L. Jones to Moore

Texas Taxes
L. Jones to Altkrug

Litigation Memoranda

Texas 23A McCulloch. Newly discovered opinion evidence as grounds for new trial
Hertz to Lamberton